**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929**

**WP(C).No. 32053 of 2007(N)**
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**PETITIONER:**
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**ABRAHAM SASON,S/O.JOSEPHAI,**
**AGED 42 YEARS, RESIDING AT 40/3188,**
**BROAD WAY, ERNAKULAM, COCHIN-31.**

**BY ADV. SRI.GEORGE KURUVILLA(ALAPPUZHA)**

**RESPONDENTS:**
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**1. ELIAS JOSEPHAL, S/O.JOSEPHAL,**
**K.K.PADMANABHAN ROAD, NEAR POWER HOUSE,**
**KOCHI-17.**

**2. SHEEMON JOSEPHAI,S/O.JOSEPHAL,**
**NAVODAYA,C-10,SARANYA APARTMENTS,KALOOR KOCHI-17.**

**3. THE SUB INSEPCTOR OF POLICE**
**CENTRAL POLICE STATION, ERNAKULAM.**

**4. THE CIRCLE INSEPCTOR OF POLICE**
**CENTRAL POLICE STATION, ERNAKULAM.**

**5. THE COMMISSIONER, OF POLICE**
**KOCHI CITY.**

**BY ADV. SRI.K.R.VINOD**
**GOVERNMENT PLEADER SRI. P.A.SALIM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 32053/2007 N**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE REGISTERED WILL NO. 111/139/03 OF THE ERNAKULAM SUB REGISTRY EXECUTED BY LATE ABIGAYIL.**

**EXT.P2. COPY OF THE POWER OF ATTORNEY DT. 1/6/07 EXECUTED IN FAVOUR OF MIRIAM ELIAS.**

**EXT.P3A AND B. COPY OF THE DISCHARGE SUMMARY ISSUED FROM THE GENERAL HOSPITAL, ERNAKULAM.**

**EXT.P4. COPY OF THE COMPLAINT DT. 25/10/2007 AND ITS RECEIPT OF ACKNOWLEDGEMENT.**

**EXT.P5A AND B: COPY OF THE PHOTOS DEVELOPED FROM THE NEGATIVES IN THE HADS OF THEPETITIONER SHOWING THE SHOP ROOM BEFORE THE TRESPASS.**

**EXT.P6A TO F: COPES OF PHOTOGRAPHS TAKEN ON 2ND NOVEMBER, 2007 SHOWING THE SPEEDLY CONSTRUCTIONS GOING ON THE SHOP ROOM BELONGING TO THE PETITIONER.**

**EXT.P7A AND B: COPY OF THE LATEST RECEIPTS DT. 28/2/2007 SHOWING PAYMENT OF TRADE LICENSE FEE TO THE COCHIN CORPORATION FOR CASSETTEE SHOP AND STATIONARY SHOP.**

**EXT.P8 AND B: COPY OF THE LATEST RECEIPT DT. 28/2/2007 SHOWING THE PAYMENT OF PROFESSION TAX OF THE NEW MENORA CASSETTES AND ZION AGENCIES TO THE COCHIN CORPORATION.**

**EXT.P9 AND B: COPY OF THE LATEST PROPERTY TAX RECEIPT DT. 28/2/2007 & 3/08/07 OF THE COCHIN CORPORATION.**

**EXT.P10. COPY OF THE LATEST ELECTRICITY BILL DT. 17/09/2007 AND RECEIPT DT. 27/09/2007 OF THE SHOP ROOM.**

**EXT.P11. COPY OF THE PETITIONER'S VISITING CARD SHOWING THE MENORAH CASSETTES.**

**EXT.P12. COPY OF THE ORDER DT. 1/4/97 BY THE KSEB.**

**EXT.P13A TO D: COPY OF THE PROPERTY TAX PASS BOOKS OF THE COCHIN CORPORATION WITH RESPECT TO THE BUILDING NO. 3187 AND 3188.**

**RESPONDENT'S EXHIBITS** **NIL.**

*True copy*

*tga*

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

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W.P.(C) NO. 32053 OF 2007-N

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Dated 7th November, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner and respondents 1 and 2 are brothers. Ext.P1 is the Will executed by the petitioner's mother bequeathing her property to him and his sisters. As per the said Will no share was allotted to respondents 1 and 2. Based on Ext.P1 the petitioner claims possession and ownership of two shop rooms and a residential building along with his sisters. In one of the shop rooms he is running a stationery shop, it is submitted. The other shop room is divided into two parts. One part is used for running a video cassette shop and the other part is used as a store room. After the death of his mother, on the strength of Ext.P1, the petitioner and his sisters are in possession and enjoyment of the said property. While so, respondents 1 and 2 trespassed into the store room on 22.10.2007 and reduced it to their possession. There was an altercation between the petitioner and his nephew on one side and respondents 1 and 2 on the other. The same led to the registration of a criminal case and a counter case. The petitioner and his

nephew were hospitalised. The petitioner submits, again on 24.10.2007 at about 1 a.m., the respondents 1 and 2 trespassed into the room housing the video cassette shop. He further submits, he is a bachelor and physically he is not a match to the physical strength of respondents 1 and 2 and therefore, he apprehended that he may be driven out from the room housing the stationery shop and also from his residential building. So, he filed a representation before the police and when no help was forthcoming, this writ petition was filed, seeking police protection.

2. The respondents 1 and 2 have filed a counter affidavit, in which they deny all the allegations of the petitioner and also the claim made by him on the strength of the alleged Will executed by their mother. They would submit that the mother does not have any exclusive right over the property and therefore, her Will is invalid. They claim possession over the room housing the video cassette shop and the store. It was always in their possession and they were in fact attacked by the petitioner and their nephew. The allegations of trespass during night and reducing the building to their possession etc., are denied by them. The petitioner has filed a detailed reply affidavit to support the claim made by him in the writ petition.

3. Heard the learned Government Pleader for the official respondents

also. Having regard to the facts of the case, we feel that the civil dispute between the brothers has to be settled by the competent civil court or other appropriate forums. The parties may move the Mediation Centre also, if they think fit. But, breach of peace and commission of cognizable offences have to be prevented. The police will take effective action in this regard, if they are alerted by the petitioner or the party respondents, regarding commission of cognizable offences or apprehension of immediate commission of cognizable offences.

The Writ Petition is disposed of as above.

**K.BALAKRISHNAN NAIR, JUDGE.**

**T.R.RAMACHANDRAN NAIR, JUDGE**.

Nm/